



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** DataVault Corporation  
**File:** B-223937; B-223937.2  
**Date:** November 20, 1986

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### **DIGEST**

Protest that agency relaxed specifications without notifying protester is dismissed where there is no showing that protester was prejudiced by the agency's actions.

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### **DECISION**

DataVault Corporation protests the award of a contract to Data Base Corporation under Department of Health and Human Services (HHS) request for proposals (RFP) No. HCFA-86-037/MDW. DataVault asserts that the proposal submitted by Data Base does not comply with certain mandatory requirements of the RFP and that the award thus should have been made to DataVault as the only acceptable offeror. DataVault also requests reimbursement of the costs it incurred in responding to the RFP and in pursuing this protest. We dismiss the protest and the claim.

The RFP requested offers to provide secure storage space for data tapes currently located at the HHS Woodlawn, Maryland, facility. The RFP also required offerors to provide transportation services for the tapes and to have an acceptable alternate facility for use in the event of a localized disaster. The RFP provided that award would be made to the responsible offeror whose offer conformed to the solicitation and was most advantageous to the government, price and other factors considered.

HHS received offers from Data Base and DataVault. Based on the technical evaluation, the agency found both offerors technically acceptable and requested their best and final offers (BAFOs). The costs proposed in the Data Base and DataVault BAFOs were \$145,000 and \$180,900, respectively, and the agency therefore awarded the contract to Data Base.

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DataVault asserts that the Data Base storage facility does not comply with the RFP requirements that the vault have two separate ceilings (a concrete vault ceiling and a separate facility ceiling); that all sides of the vault have an Underwriters Laboratories, Inc. (UL), 4-hour fire rating; and that the facility have sensors for detecting vibrations. DataVault also alleges that because the alternate facility proposed by Data Base is in Richmond, Virginia, Data Base cannot comply with the requirement to be capable of transporting tapes to the HHS Woodlawn facility from the alternate facility within 30 minutes after an emergency request. DataVault concludes that HHS, in effect, improperly waived these requirements for Data Base without giving DataVault a chance to submit a revised price proposal.

When the government changes or relaxes its requirements, either before or after the receipt of proposals, it generally is required to issue a written amendment to afford all offerors an opportunity to respond to the revised requirements. AT&T Communications, B-221463, et al., Mar. 12, 1986, 65 Comp. Gen. \_\_\_\_ (1986), 86-1 C.P.D. ¶ 247. Our Office will not sustain a protest based on the government's failure to issue such an amendment, however, absent evidence that the protester was prejudiced by the agency's actions, that is, that the protester would have altered its proposal to its competitive advantage had it been given the opportunity to respond to the modified requirements. Centennial Computer Products, Inc., B-211645, May 18, 1984, 84-1 C.P.D. ¶ 528.

The requirements about which DataVault complains appear to have been relaxed to some extent by HHS in order to enhance competition. In this regard, the record indicates HHS concluded that Data Base's facility met the two-ceiling requirement, even though the concrete vault ceiling also served as the facility ceiling; that HHS applied standards other than UL standards in finding that the Data Base facility met the 4-hour fire rating requirement; and that the Data Base facility is not equipped with vibration sensor detection equipment. HHS further determined that neither DataVault nor Data Base could consistently meet the response time requirement from their offered alternate facilities and therefore decided to waive the requirement for both offerors.

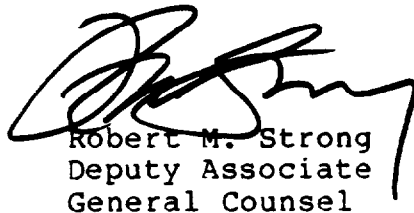
Although HHS never issued an amendment spelling out the relaxed or altered requirements, we find no evidence that this failure on HHS's part was prejudicial to DataVault's competitive standing. DataVault's offered facilities apparently meet the requirements as originally stated, and

DataVault neither asserts nor demonstrates that it would or could have offered a different facility at a lower proposed cost had it been aware that the original requirements had been changed. Certainly, there is no evidence that DataVault would have reduced its price the \$35,000 necessary to supplant Data Base as the low offeror, the ultimate basis for the award.

DataVault's assertion that it was prejudiced by the agency's decision to waive the requirement for the alternate facility response times essentially is based on the fact that it offered an inflated price on the belief that no other offeror could meet this requirement. Had HHS held discussions and disclosed this altered requirement, DataVault explains, it would have assumed there was competition, and therefore would have decreased its proposed cost.

We find this argument unpersuasive. First, DataVault's bare statement that it would have lowered its price had it known there was competition, absent some detailed showing of some direct price impact, simply is not sufficient to establish that the firm in fact would have overcome Data Base's price advantage. See WHY R & D, Inc., B-221817, Apr. 16, 1986, 86-1 C.P.D. ¶ 375. We note that DataVault already had reduced its proposed price from \$366,900 to \$180,900 in its BAFO. Second, and more important, while we are well aware of the realities of the marketplace, it is our strong view that an offeror proposing an inflated price in what on its face is a competitive procurement, based on an assumption that there will be no competition, does so at its own risk, when the assumption proves to be wrong.

As DataVault has not shown it was prejudiced, the protest is dismissed as academic. Centennial Computer Products, Inc., B-211645, supra. DataVault thus is not entitled to recover proposal preparation costs and the costs it incurred in pursuing this protest.

  
Robert M. Strong  
Deputy Associate  
General Counsel